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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,791	09/29/2003	Steven D. Seip	47003-070002	2992

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EXAMINER

CHEUNG, WILLIAM K

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 10/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/673,791

Applicant(s)

SEIP ET AL.

Examiner

William K Cheung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 12-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 12-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Applicant's affirmed election of Group I invention, claims 1-6, 12-24, is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Therefore, in view of lack of traversal to restriction requirement set forth from Response to Restriction Requirement, the restriction set forth by the examiner is deemed proper and is therefore made Final.
2. In view of amendment filed October 4, 2004, non-elected claims 7-11 have been cancelled. Claims 1-6, 12-24 are pending.

Claim Objections

3. Claims 1, 3, 12, 13, 17, 18, 21, 22 are objected to because of the following informalities: A recitation of a Markush Group does not require a colon after "consisting of". Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 4, 5, 14, 15, 19, 20, 23, 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recited "thiosynergist" is not defined in the specification. Although the word means something that has synergy effect with sulfur, the recitation does not specify what type of synergy is there. What is "theosynergist"?

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1-6, 12-24 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Betso et al. (US 5,925,703).

*The invention of claims 1-6 relates to a **household article** exhibiting enhanced resistance to staining, said household article comprising:*
*a **nucleated propylene/ethylene impact copolymer** having an **ethylene content of up to about 15 percent by weight**, and a **xylene solubles fraction** having an **intrinsic viscosity of at least 3 dL/g**;*

wherein said **xylene soluble fraction has a molecular weight (Mw/1000) of at least about 350**; said propylene/ethylene copolymer containing an **additive package** consisting essentially of: a **phenolic antioxidant**, a **phosphite**, and an **acid scavenger**; said household article being **essentially free of sodium containing additives**.

The invention of claims 12-16 relates to a **household article** exhibiting enhanced stain resistance, said household article comprising:
a **propylene homopolymer** having a **crystallinity of at least about 55 percent**, said propylene polymer containing an **additive package** consisting essentially of: a **phenolic antioxidant**, a **phosphite**, and an **acid scavenger**; said household article being **essentially free of sodium containing additives**.

The invention of claims 17-20 relates to a **composition for producing household articles** exhibiting enhanced resistance to staining, said composition comprising:
a **nucleated propylene/ethylene impact copolymer** having an **ethylene content of up to about 15 percent by weight**, and a **xylene solubles fraction** having an **intrinsic viscosity of at least 3 dL/g**;
wherein said **xylene soluble fraction has a molecular weight (Mw/1000) of at least about 350**;

said propylene/ethylene impact copolymer containing an **additive package** consisting essentially of: a **phenolic antioxidant**, a **phosphite**, and an **acid scavenger**; said composition being essentially **free of sodium containing additives**.

The invention of claims 21-24 relates to a **composition for producing household articles** exhibiting enhanced resistance to staining, said composition comprising;
a propylene homopolymer having a **crystallinity of at least about 55 percent**, said propylene polymer containing an **additive package** consisting essentially of: a **phenolic antioxidant**, a **phosphite**, and an **acid scavenger**;
said composition being **essentially free of sodium containing additives**.

Since applicants fail to disclose what a "thiosynergist" is, it is reasonable for the examiner to broadly interpret that the "thiosynergist" can be anything including, moisture or air that may be entrapped during the molding process for forming the articles or compositions.

Betso et al. (abstract; col. 9, line 55-60) disclose filled polymer compositions that are easily molded and have utility in household articles. Further, Betso et al. (col. 9, line 12-37) clearly disclose polypropylene copolymers comprising 1,5-7% of ethylene as a thermoplastic component of the filled polymer composition. Betso et al. (col. 6, line 1-29) disclose that the filled composition comprising talc as a filler, and phenolic based

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antioxidants, phosphites. Since Betso et al. are silent on using a sodium containing additives in the disclosed composition, the examiner has a reasonable basis to believe that the claimed "essentially free of sodium containing additives" is inherently possessed in Betso et al.

Because it is well known in the art of polyolefin polymerization, polyolefins (fluff) are generally compounded with an acid neutralizer (such as calcium stearate) immediately after production to prevent the degradation from the residual catalyst from the polymerization process, the examiner has a reasonable basis to believe that the claimed acid scavenger (or calcium stearate) is inherently possessed in Betso et al.

Further, in view of the substantially identical composition disclosed in Betso et al. and the composition being claimed, the examiner has a reasonable basis to believe that the claimed intrinsic viscosity and the molecular of the xylene solubles, the crystallinity of the propylene homopolymer are inherently possessed in Betso et al. Since the PTO does not have proper means to conduct experiments, the burden of proof is now shifted to applicants to show otherwise. In re Best, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977); In re Fitzgerald, 205 USPQ 594 (CCPA 1980).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
10. Claims 5, 15, 19, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Betso et al. (US 5,925,703) which is affirmed by GE product trade literature on Ultranox 641.

The difference between the composition of Betso et al. and the articles as claimed in claims 5, 15, 19, 24 is that Betso et al. are silent on the specific amount of each of the additives being claimed.

However, in view that the claimed specific amount of additives in the claims are within the recommended amount suggested by the supplier of the additives, motivated by the expectation of success of preparing an article with improved color, thermal, stability, it would have been obvious to one of ordinary skill in art to use the amount as recommended by the additive supplier to obtain the invention of claims 5, 15, 19, 24. To overcome the instant 103 rejection, applicants should submit comparative data to show the criticality of the claimed composition of the articles.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William K Cheung whose telephone number is (571) 272-1097. The examiner can normally be reached on Monday-Friday 9:00AM to 2:00PM; 4:00PM to 8:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David WU can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William K. Cheung

Primary Examiner

**WILLIAM K. CHEUNG
PRIMARY EXAMINER**

October 22, 2004